

(7)
No. 84-978

Supreme Court, U.S.

FILED

AUG 1 1985

JOSEPH F. SPANIOL, JR.
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM 1985

EXXON CORPORATION, THE BF GOODRICH COMPANY,
UNION CARBIDE CORPORATION, MONSANTO COMPANY
AND TENNECO CHEMICALS, INC.,

Appellants,

VS.

ROBERT HUNT, Administrator of New Jersey Spill
Compensation Fund; CLIFFORD A. GOLDMAN, Treasury of
the State of New Jersey; SIDNEY GLASER, Director of the
Division of Taxation; JERRY F. ENGLISH, Commissioner of
Environmental Protection; and THE STATE OF NEW
JERSEY,

Appellees.

Appeal From the Supreme Court of New Jersey

JOINT APPENDIX

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Jurisdictional Statement Filed 12/17/84
Probable Jurisdiction Noted 6/17/85

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DOCKET ENTRIES

7/12/83—PB

SUPREME COURT OF NEW JERSEY

**Docket #21,567 Cert #C-46-83 Appeal #A-78-83
Motion #M-108-83**

**Exxon Corporation, The BFGoodrich
Company, et al P-P/A**

Farrell, Curtis, Carlin, & Davidson, Esqs.

v.

Robert Hunt, et al D-R

Attorney General

App Div Docket #A-3913-81T2

App Div Docket #A-3546-81T2

App Div Decision Date 6/22/83

Transcripts 9/9/83 Vol 1 Copies 3

S.Ct. Argument Date 1-23-84

7/12/83—Notice of Petition (+ Afft.)

7/12/83—Notice of Appeal (+ Afft.)

7/21/83—Pet for Cert and Appendix (+ Afft.)

7/21/83—App Div Briefs & Appx. & Reply Brief

8-12-83—Resp Brief (+ Afft.)

8-12-83—App Div Briefs

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8-8-83—Pet. & Order permitting resp. brief to be filed on or before 8-12-83

8-24-83—Motion for extension of time to file Appellants brief, afft. in support—Farrell, Esq.

9-28-83—Order dismissing the motion for extension of time to file appellants brief as moot (M-108-83)

9-9-83—Order Grant Cert

7/12/83—\$250.00 Farrell, Esq. Security Deposit

12-3-84—Affidavit of Costs

7/10/85—Taxed Costs

Fees App \$20-, \$20-

Decision Affirm

Decision Date 9-19-84 Vote 5-0

Opinion by Clifford, J. Pages 29

10-4-83—Corrected Order on motion for an extension of time to file the Appellants' brief is dismissed as moot (M-108)

12/2/83—Supplemental Letter—Farrell, Esq.

1/2/85—N/A to U.S. Supreme Ct

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SUPREME COURT OF NEW JERSEY

Stephen W. Townsend
Clerk

Office of the Clerk
CN 970
Trenton, N.J. 08625

Keith M. Endo
Deputy Clerk

TO WHOM IT MAY CONCERN:

I, the undersigned, Clerk of the Supreme Court of New Jersey, do hereby certify that the attached is a true copy of the docket sheets in *Exxon Corporation, et al. v. Robert Hunt, et al.*, A-78 September Term 1982, Docket Number 21,567.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Court at Trenton, this 29th day of July, 1985.

/s/ STEPHEN W. TOWNSEND
Clerk

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GUIDANCE

COOPERATIVE AGREEMENTS AND CONTRACTS WITH STATES UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980 (P.L. 96-510)

U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF EMERGENCY AND REMEDIAL
RESPONSE
MARCH 1982

EXECUTIVE SUMMARY

Based on authorities provided in Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and delegated in Executive Order 12316, the Environmental Protection Agency (EPA) is authorized to take remedial actions to clean up uncontrolled hazardous waste sites. In granting this authority, Congress also included provisions in the law requiring that Federal response actions be coordinated with State actions. Four provisions are of particular importance to Federal/State relations.

The first is the requirement that Federal remedial actions be undertaken only after consultation with the affected State or States. Agreements reached between the State and EPA are documented in a Cooperative Agreement or Superfund State Contract.

The second provision relates to assurances that the af-

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affected State must provide prior to any remedial action. The State must assure that it will:

- Assume operations and maintenance (O&M) responsibility for the site for all removal and remedial measures that are implemented.
- Provide for a facility for off-site disposal if necessary, and
- Share in the costs of the remedial action.

These assurances are included in the Cooperative Agreement or State Contract negotiated with the State.

The third and fourth provisions for coordinating State and Federal actions relate to the granting of a credit to an affected State for costs expended or obligated at a remedial action site between January 1, 1978 and December 11, 1980. The credit is used as part of the State's share of costs for a Federally funded response at the site.

The following additional guidance has been established by the Administrator to further define each of these provisions:

1. STATE CONTRACTS AND COOPERATIVE AGREEMENTS

CERCLA specifies that remedial actions (including any remedial planning activities) can be undertaken at a site only if a Cooperative Agreement or Superfund State Contract covering that action has been executed.* Both in-

* CERCLA Section 104(b) authorizes the President to "... undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate [sic] to plan and direct response actions ...". CERCLA Section 104(c)(3) requires that "... The President shall not provide any remedial actions ... unless the State in which the release occurs first enters into a contract or cooperative agreement with the President ...".

struments are legally binding upon the State and EPA. The arrangement that is executed depends on whether EPA or the State assumes the lead responsibility for the remedial action:

- A Cooperative Agreement is required when the State has lead responsibility for the activity and funds are transferred to the State
- A Superfund State Contract is required when EPA has lead responsibility for the activity.

EPA will encourage States to assume lead responsibility for remedial actions in order to assist them in developing their own individual response capabilities:

Authority to bind EPA to the terms of a Cooperative Agreement or a Superfund State Contract has been delegated to the following EPA Officials.

- The Director, Grants Administration Division for Cooperative Agreements (the Award Official)
- The Assistant Administrator, Office of Solid Waste and Emergency Response for Superfund State Contracts (the Decision Official)

The signature of an authorized State official, certified by the State's Attorney General as having the authority to bind the State, also is required to execute the Cooperative Agreement or State Contract.

As action progresses at a site, a new or amended Cooperative Agreement or State Contract may be negotiated if necessary to incorporate any changes.

Cooperative Agreements and State Contracts will be site-specific and may cover one or more activities at that site.

2. STATE ASSURANCES

a) O&M

Prior to remedial investigation activity at a site, the State's Governor or Attorney General must sign a letter acknowledging State responsibility for operating and maintaining the action. The letter must be submitted as an attachment to the application for a Cooperative Agreement or State Contract.

Prior to remedial design activity, the State must make a firm commitment, either through a Cooperative Agreement or a new or amended State Contract, to assume O&M responsibility. To satisfy this requirement, the State must:

- Identify the organization unit responsible for administering O&M activities,
- Identify the State's financial mechanism for funding O&M activities, and
- Identify milestone dates for assuming responsibility.

In those cases where part or all of the selected remedy requires future O&M, EPA will share in those costs associated with ensuring that the remedy is functional and operational for a period not to exceed six months after completion of construction. Funds for this 6-month period must be specified before hand [sic] in a Cooperative Agreement.

b) Off-Site Disposal

Prior to remedial investigation activity at a site, the State must assure EPA in writing that it will provide an acceptable hazardous waste disposal facility, if one is needed to implement the remedial action selected. To be acceptable, the facility must:

- Have sufficient capacity to handle wastes from the site, and

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- ° Be compatible with the type of wastes found on the site.

The written assurances shall be obtained beforehand from the State official who is authorized to enter into a Cooperative Agreement or State Contract.

c) *Cost-Sharing*

Prior to the commencement of any activity at a site, the State is required to acknowledge its responsibility to share in the cost of the action:

- ° At publicly owned sites, the State must share 50 percent of all response costs.
- ° At privately owned sites, States must share 10 percent of remedial planning (remedial investigation, feasibility study, and design) and remedial implementation.

This acknowledgement may be done either through a Cooperative Agreement or a new or amended State Contract. A State may authorize the reduction of its credit to cover its share of costs. If the State credit is not sufficient to satisfy the State's share of the costs:

- ° State funds will be used simultaneously with Federal funds for site expenses under a Cooperative Agreement.
- ° Payment terms will be negotiated and agreed to in a State Contract.

Prior to remedial design activity, the State must, either through a Cooperative Agreement or a new or amended State Contract, make a firm commitment to provide funding for remedial implementation. A State may satisfy this assurance by:

- ° Authorizing the reduction of a State credit to cover its share of costs, or

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- ° Identifying currently available funds earmarked for remedial implementation, or
- ° Submitting a plan with milestones for obtaining necessary funds.

3. STATE CREDITS

State credits must be documented on a site-specific basis for State out-of-pocket, non-Federal eligible response costs between January 1, 1978 and December 11, 1980. Prior to remedial investigation activity at a site, the State must submit its estimate of these costs as a part of the pre-application package when a Cooperative Agreement is used, or as a part of the State Contract.

State credits will be applied against State cost shares for Federally funded remedial actions. A State cannot be reimbursed from the Fund for credit in excess of its matching share.

4. STATE COST-SHARE CONTRIBUTION

Terms for obtaining State cost shares for remedial activities will be identified in the Cooperative Agreement or State Contract covering those activities. Where a credit has been identified at a site, EPA will reduce that credit by an amount equal to the State's share of costs until the credit is eliminated or the remedial action is complete.

For EPA-led remedial actions where there is no State credit or the credit is not sufficient to cover State costs, payment terms will be negotiated between EPA and the State and documented in the State Contract. The terms agreed to should accommodate individual State needs, within these constraints:

- ° States should provide some up-front funds for each planning activity (remedial investigation, feasibility study, remedial design) before that activity starts.

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- Other payments may be scheduled during or immediately following each planning activity.
- Prior to implementing the chosen remedial action, EPA will require full payment of the State's share of remedial planning.

For State-led remedial actions where there is no State credit or the credit is not sufficient to cover State costs, the Cooperative Agreement will cover only EPA's share of costs. EPA will provide the award amount to the State through a letter of credit. States are required to match Federal funds as work progresses. Drawdowns will be monitored to ensure that States provide their cost shares as Federal funds are used.

5. PRE-EMPTION

Section 114(c) of CERCLA prohibits a State from requiring persons to contribute to funds for the purpose of certain activities related to hazardous substance response. EPA has reviewed the type of hazardous response activities covered by this section and has determined that it does not apply to State funds which are used for the following purposes:

- To finance the administrative costs of a State fund,
- To finance the purchase or prepositioning of hazardous substance response equipment and other preparations for responding to releases within a State,
- To finance the cleanup of petroleum discharges,
- To pay the required State contribution to cleanup actions financed by the CERCLA Trust Fund,
- To compensate claims for the cost of restoration and replacement of any natural resources damaged or destroyed by a release of a hazardous substance,

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- To advance funds to remove or remedy releases of hazardous substances eligible to be financed by the Hazardous Substance Response Fund if a Cooperative Agreement or Contract has been issued by the Environmental Protection Agency.
- To compensate damage claims and to remove or remedy releases of hazardous substances eligible to be financed by the Fund but for which no federal reimbursement is provided.

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SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

Docket No. A-3913-81T1

Exxon Corporation, The BF Goodrich Company, Union
Carbide Corporation, Monsanto Company and Tenneco
Chemicals, Inc.,

Plaintiffs-Appellants,

vs.

Robert Hunt, Administrator of N.J. Spill Compensation
Fund; Clifford A. Goldman, Treasurer of the State of N.J.;
Sidney Glaser, Director of the Division of Taxation; and
the State of N.J.,

Defendants-Respondents.

and

Exxon Corporation, The BF Goodrich Company, Union
Carbide Corporation, Monsanto Company and Tenneco
Chemicals, Inc.,

Plaintiffs-Appellants,

vs.

Robert Hunt, Administrator of N.J. Spill Compensation
Fund; Clifford A. Goldman, Treasurer of the State of N.J.;
Sidney Glaser, Director of the Division of Taxation; Jerry
F. English, Commissioner of Environmental Protection;
and the State of N.J.,

Defendants-Respondents.

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CONSOLIDATED CIVIL ACTIONS—ON APPEAL FROM FINAL
DECISION OF THE TAX COURT OF NEW JERSEY
SAT BELOW: HON. JOHN F. EVERS, J.T.C.

Docket No. A-3546-81T2

Exxon Corporation, the BF Goodrich Company, Union
Carbide Corporation, Monsanto Company and Tenneco
Chemicals, Inc.,

Appellants,

vs.

Kenneth R. Biederman, Treasurer of the State of N.J.
and the N.J. Department of the Treasury,

Respondents.

CIVIL ACTION—ON APPEAL FROM PROMULGATION OF
REGULATIONS BY THE TREASURER OF THE STATE OF NEW JERSEY

APPENDIX ON BEHALF OF PLAINTIFFS-APPELLANTS

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JOHN J. CARLIN, JR.
LISA J. POLLAK
On the Brief

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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY

DIVISION OF LAW
FINANCIAL SECTION
107 West State Street
CN 112
Trenton 08625
Telephone 609/292-1526

November 17, 1981

John J. Carlin, Jr., Esq.
Farrell, Curtis, Carlin & Davidson
43 Maple Ave.
P. O. Box 145
Morristown, NJ 07960

Re: EXXON Corp. v. Hunt

Dear Mr. Carlin:

This letter is to confirm the figures supplied to you today by telephone. As I noted to you, these figures are estimated and subject to verification and are being furnished at your request so as to obviate the need, at the present time, to take the depositions of the various State officials you have previously noted. We will continue to work on answers to your questions and will respond to you as soon as the results are obtained.

Information furnished by the Office of the Administrator of the Spill Compensation Fund:

Period 7/1/80 to 6/30/81

Clean-up Expenditures	
Hazardous Substances	\$27,000,000
Petroleum	\$ 370,000

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Damage Claim Expenditures	
Hazardous Substances	\$ 354,000
Petroleum	\$ 124,000

Information supplied by the Division of Taxation:

<i>Fiscal Year</i>	<i>Amount of Tax Revenue</i>
1977	\$ 1,100,415
1978	6,429,830
1979	6,402,848
1980	6,850,324
1981	12,788,846

At the present time, there are 262 taxpayers registered under the Spill Compensation and Control Act.

I am enclosing copies of the three schedules prepared by the Administrator of the Spill Compensation Fund.

Very truly yours,

JAMES R. ZAZZALI
Attorney General of New Jersey

By: /s/HERBERT K. GLICKMAN
Herbert K. Glickman
Deputy Attorney General

g

encl.

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NEW JERSEY SPILL COMPENSATION FUND
 SCHEDULE OF REVENUES AND DISBURSEMENTS
 JULY 1, 1979 TO JUNE 30, 1980
 FUND BALANCE JUNE 30, 1980

Fund Balance 6/30/79 \$11,823,040.37

REVENUES

Tax Deposits	\$6,849,636.73	
Penalties & Interest	13,161.63	
Interest Transferred—Cash Management Fund	1,826,496.38	\$8,689,294.74

Total Available 20,512,335.11

EXPENDITURES

Clean-up	2,612,390.49	
Transferred to Treasury Administration	(15,865.68)	2,596,524.81

Treasury Administration	55,860.26	
Transferred from Clean-up	(15,865.68)	
Damage Claims	63,516.44	
DEP Administration	659,129.82	
DEP—Research	131,399.60	909,906.12

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LIABILITIES

Clean-up Obligations	2,130,978.82	
Administration Obligations—Treasury	100,000.00	2,230,978.82

Total Expenditures & Liabilities 5,753,275.43

Fund Balance June 30, 1980 \$14,759,059.68

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NEW JERSEY SPILL COMPENSATION FUND
STATEMENT OF ACCOUNT

Fund Balance as of June 30, 1980		\$14,759,059.68
Outstanding Violations		34,800.00
		<hr/>
		14,793,859.68
<i>Liabilities</i>		
Damage Claim Reserves 6/30/80		
Chemical Control	\$1,000,000.00	
Other Claims	300,000.00	
	<hr/>	
Clean-up Expenses Reserves:		
Chemical Control Corporation	10,000,000.00	
Pre-Act Discharges	1,500,000.00	12,800,000.00
	<hr/>	
Balance		\$1,959,059.68
		<hr/>
		<hr/>

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The cost of cleanup of the discharge of hazardous material continues to dominate expenditures from the Fund. During the fiscal year 7/1/79-6/30/80, the total cost for cleanup and removal of current discharges amounted to \$2,422,152.62 of which \$2,395,806.69 represents the cleanup and removal of hazardous materials other than petroleum. Furthermore, amendatory legislation was signed into law in January 1980 which gives the Administrator authority, subject to availability of funds, to approve the cost of cleanup and removal of conditions which may not constitute a discharge but create an imminent peril to the safety and welfare of the public. The amended legislation also permits the Administrator, subject to availability of funds, to approve annual expenditures not to exceed \$3 million for the cleanup and removal of discharges which commenced prior to the inception of the Act. The New Jersey Department of Environmental Protection is actively working to identify and establish priorities on this subject, which is composed largely of abandoned sites of hazardous materials and it is expected that the full \$3 million annual allotment will be utilized.

The previously reported legal decision in the Bergen County Superior Court litigation of State of New Jersey, Department of Environmental Protection vs. Ventron Corporation is under appeal. Since amendments to the law provide a limitation of \$1.5 million per site for pre-Act discharges, the impact of any decision against the Fund may conform to the new statutory limit. However, the possibility remains of an adverse interpretation which would expose the resources of the Fund to unlimited liability.

On April 21, 1980, a major discharge of hazardous material occurred when an explosion and fire erupted at the site of the Chemical Control Corporation in Elizabeth, New Jersey. The results of this occurrence created an imminent peril to the safety and welfare of the residents of the

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City of Elizabeth and the environment which required immediate action by the New Jersey Department of Environmental Protection to accelerate cleanup and removal operations which were already in process. As of June 30, 1980, it is estimated that the total cost of cleanup to be completed by November 1, 1980 will approach \$12 million. Additional obligations of approximately \$1 million can be anticipated for the payment of damage claims presented by third parties. The cost of this cleanup will dramatically reduce the balance in the Fund which could create an availability problem in the cleanup of future discharges.

Efforts to recover funds against responsible dischargers are continuing with legal actions being prepared and pursued by deputies in the Attorney General's office representing the Fund. Many legal issues have been raised by alleged dischargers which have impeded reimbursement to the Fund and will result in extended legal activity.

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NEW JERSEY SPILL COMPENSATION FUND
CLEAN-UP EXPENSE SUMMARY

7/1/79-6/30/80

PAID

Petroleum Spills	\$ 26,345.93
Chemical Spills	2,395,806.69
Pre-Act Discharges	174,372.19

RESERVES

Cleanup in Progress

Chemical Control	10,000,000.00
Pre-Act Discharges	1,500,000.00

TOTAL \$14,096,524.81

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NEW JERSEY SPILL COMPENSATION FUND

CLEAN-UP EXPENSE

7/1/79-6/30/80

PETROLEUM SPILLS

NO.	SPILL	AMOUNT
1. 798-02	#2 oil, unknown source	\$ 5,565.73
Burlington County		
2. 798-06	deliberate dump-kerosene	5,281.24
Allamuchy	& other oils	
3. 798-07	deliberate dump-kerosene	532.08
Allamuchy	& other oils	
4. 778-02	illegal dump of trans-	2,790.53
Perth Amboy	former oil	
5. 798-11	#2 oil at truck rest area,	4,863.06
Harding Twp.	source unknown	
6. 798-18	oil spill, source unknown	7,313.26
Willingboro (Edgewater Park)		
TOTAL: \$26,345.93		

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NEW JERSEY SPILL COMPENSATION FUND

CLEAN-UP EXPENSE

7/1/79-6/30/80

CHEMICAL SPILLS

NO.	SPILL	AMOUNT
1. 789-08	fire in chemical warehouse,	\$ 126,632.39
Jersey City	massive discharge of	
(United	hazardous substances; fire	
Chemical	originated at adjacent	
	location	
2. 789-13	fire in chemical warehouse,	75,365.46
Newark	discharge of hazardous	
(Arlington	substances	
Warehouse)		
3. 798-09	alleged illegal dumping of	
Jackson	hazardous materials	4,525.90
Township		
4. 798-12	hazardous materials discharge	48,285.81
Hillsborough	from tanks and drums	
Twp.		
5. 798-14	leaking drums of hazardous	50,586.36
Sayreville	materials	
6. 798-15	leaking drums of hazardous	7,097.80
Cape May	materials; contaminated soil	
7. 798-16	cleanup & removal of drums	25,960.73
Elizabeth	of chemical waste	
(Flora St.)		
8. 798-17	alleged illegal dumping of	138,688.53
Jersey City	hazardous materials	
9. 789-17	leaking drums of waste	1,918,663.71
Elizabeth	chemicals; court order	
(Chemical	issued to clean-up; explo-	
Control)	sion and fire	
TOTAL: \$2,395,806.69		

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NEW JERSEY SPILL COMPENSATION FUND

CLEAN-UP EXPENSE

7/1/79-6/30/80

PRE-ACT DISCHARGES

NO.	SPILL	AMOUNT
1. 80-10	Small number of drums of hazardous material dumped along roadside	\$ 2,173.00
Altman Avenue Rutherford		
2. 80-07	Abandoned factory with 1,000 drums & 500 5-gallon pails of hazardous waste, soil contamination	1,692.00
Sayreville (Atlantic Development)		
3. 80-16	Abandoned site with 10,000 drums of various hazardous wastes; limited soil & groundwater contamination	84,256.15
New Brunswick (A-Z Chemical)		
4. 80-02	40 leaking drums of assorted solvents and adhesives; 5 cubic yards of contaminated soil	13,505.03
Piscataway (Bubenick)		
5. 80-05	Abandoned building with 7,000 gallons of formaldehyde in open vats; several drums of various other hazardous materials	10,744.49
Newark (Thos. Cook)		
6. 80-15	Abandoned trailer containing 84 leaking drums of hazardous material	11,817.20
Howell Twp. (El Cid)		
7. 80-11	Approximately 65 drums containing hazardous wastes dumped along roadside	16,070.65
East Rutherford (Madison Circle)		
8. 80-04	Tanks containing 24,000 gallons of waste oil and sludges	34,113.67
Hillsborough Twp. (Swoco)		
TOTAL:		\$174,372.19

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ADDENDUM

Since this report is being prepared in December 1980, a copy of notification from the Administrator dated October 24, 1980, is attached which more clearly represents the current status of the Fund balance in comparison to the June 30, 1980 report.

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MEMORANDUM

Hon. Clifford Goldman
State Treasurer
and

To Sidney Glaser, Director
Division of Taxation
Department of Treasury

From Robert E. Hunt, Administrator
N.J. Spill Compensation Fund

Subject Spill Compensation Fund

Date October 24, 1980

Pursuant to the provisions of the New Jersey Spill Compensation and Control Act P.L.1976,c.141, I am notifying you that the total cost of reasonable claims against the New Jersey Spill Compensation Fund exceeds the Fund balance as recorded on October 17, 1980.

Under the provisions of C 58:10-23.11h, Section 9, the calculation of the cost of reasonable claims against the Fund requires a tax increase on hazardous substances to \$0.04 per barrel transferred or 0.8% of the fair market value of such hazardous substance, until the revenue produced by such increased rate equals 150% of the total dollar amount of all pending reasonable claims resulting from the discharge of hazardous substances other than petroleum or petroleum products. It will not be necessary to increase the tax on petroleum or petroleum products since the existing rate of \$0.01 per barrel transferred will produce sufficient revenue to satisfy outstanding reasonable claims against the Fund within one year.

The cost of reasonable claims against the Fund as the result of discharge of hazardous substances other than

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petroleum which creates the deficit balance is \$3,258,296. Therefore, the increased tax should remain in effect until it produces revenues on hazardous substances equal to \$4,887,444.

R.E.H.

R.E.H.:rj

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N.J. SPILL COMPENSATION FUND

Fund Balance 10/17/80 \$6,308,927.

Control Balance	\$2,258,492.
Interest	2,700,000.
Cleanup Balance	1,350,435.

Outstanding Expenses

Unpaid invoices at DEP	1,814,000.	
Unpaid invoices at Spill Fund	510,795.	
Unpaid invoices for Pre-Act at Spill Fund	90,198.	
Cleanup obligation (A to Z)	65,000.	\$2,479,993.

Commitments Against Appropriations

Administration Spill Fund	100,000.	
Dept. of Environ- mental Protection	500,000.	
Obligation for Adjustment Services (Chemical Control)	100,000.	700,000.

Pending Damage Claims 1,021,788.¹

*Expenses for Cleanup and Removal
of Current Discharges*

Chemical Control	2,500,000.	
Sampson Tank (Ringwood & West Milford)	3,000,000.	5,500,000. ²

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Total costs of reasonable claims
against the Fund
Operating Fund Balance 10/17/80

\$9,701,781.
(3,392,854)

NOTE:

1. 134,558. represents discharge of petroleum.
2. Of the \$5.5 million, \$2 million represents services already performed but not billed.

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NEW JERSEY SPILL COMPENSATION FUND
SCHEDULE OF REVENUES AND DISBURSEMENTS
FOR 1977, 1978 AND 1979
FUND BALANCE JUNE 30, 1979

Revenues

Interest on Investments \$ 634,471.41

Less Accrued
Interest Paid (4,031.87) \$ 630,439.54

Interest Due from
State of New Jersey
Cash Management
Fund 536,172.06

Profit & Loss 2,569.58 \$ 1,169,181.18

Division of Taxation \$13,921,663.86
Deposits

Less Refunds (23,220.60) \$13,898,443.26

Penalty and Interest 81,844.84 \$13,980,288.10

Appropriated Receipts (*See below) 1,267.50

TOTAL REVENUES \$15,150,736.78

Disbursements

Hazardous Substance
Removal Costs \$ 1,900,609.97

Cleanup and
Restoration Costs 1,361.61

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Administrative Costs

Treasury \$ 99,580.48
Oil Spill-DEP 657,135.50
Oil Spill-DEP Pollu-
tion Control 200,000.00 \$ 956,715.98

Liabilities

Obligations of
Appropriations \$ 467,741.35
Due to Emergency
Service Trust
(*See above) 1,267.50 \$ 469,008.85

TOTAL DISBURSEMENTS & LIABILITIES \$ 3,327,696.41

Fund Balance as of June 30, 1979 \$11,823,040.37

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N.J. SPILL COMPENSATION FUND

STATEMENT OF ACCOUNT

Fund Balance as of June 30, 1979		\$11,823,040.37
Outstanding Violations		34,975.00
		<hr/>
		11,858,015.37
<i>Reserves on Active Claims</i>		
Damage Claims	\$ 255,667.00	
Cleanup Expense:		
Chemical Control	2,488,061.48	
United Chemical	126,632.39	
Arlington Warehouse	75,365.46	2,945,726.33
		<hr/>
Balance		\$ 8,912,289.04*
		<hr/>
		<hr/>

* If an appellant decision in the Ventron litigation upholds a trial court interpretation declaring the Fund responsible for pre-Act discharges (see narrative), additional damage claim reserves of \$13.5 million will result, producing a deficit balance of \$4,587,-710.96.

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N.J. SPILL COMPENSATION FUND

ANNUAL REPORT

The Fund was used for the cleanup of (19) spills during the period 7/1/78-6/30/79. This included three major spills still in progress; two involving fires at chemical warehouses in Jersey City, N.J. and Newark, N.J., and an extensive cleanup of leaking waste chemical drums at the site of Chemical Control Corporation, Elizabeth, N.J. The total expense for cleanup, including reserves for work in progress will be \$4,527,095.26.

As of 6/30/79, 23 damage claims have been received. Three have been denied as not eligible for recovery and three have been paid directly by the discharger with the assistance of the Fund. Fifteen claims remain pending, six of which have been denied because they involved pre-Act discharge. The Bergen County Superior Court recently issued a decision in the case of State of New Jersey, Department of Environmental Protection vs. Ventron Corporation, which appears to hold the Fund responsible for pre-Act discharges. The full impact of this decision cannot be evaluated until the Order for Judgment is filed. It is expected most of the parties to the litigation will file an appeal. If it is concluded that the Fund will be responsible for pre-Act discharges, a reconsideration of the six known damage claims including Ventron (presently valued at \$9 million) will result in added reserves of \$13.5 million.

Public awareness of the Fund continues to increase and more time is being devoted to the evaluation and consideration of damage claims. Legal activity is also increasing as we begin subrogation actions to recover funds expended.

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N.J. SPILL COMPENSATION FUND

CLEAN-UP EXPENSE

7/1/78-6/30/79

Petroleum Spills Total	\$ 40,651.55
Chemical Spills Complete	\$1,796,384.38
Chemical Spills-Reserves	\$2,690,059.33
Cleanup in Progress	
TOTAL	\$4,527,095.26

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N.J. SPILL COMPENSATION FUND

CLEAN-UP EXPENSE

7/1/78-6/30/79

PETROLEUM SPILLS

NO.	SPILL	AMOUNT
1. 778-02 Perth Amboy	illegal dump of trans- former oil	\$25,984.09
2. 789-02 Wayne	underground fuel oil storage tank leak	2,631.25
3. 789-03 Netcong	underground fuel oil storage tank leak	726.35
4. 789-07 White House Station	gasoline-leaking under- ground storage tank	1,278.00
5. 789-10 Denville	gasoline-leaking valve at pump at gas station	3,374.38
6. 789-15 Hillsboro Twp.	gasoline or aviation fuel, source unidentified	718.40
7. 789-18 Atlantic City	#2 fuel oil-oil storage tank leak	2,643.44
8. 789-22 Carneys Point	intentional dump of oil	3,295.64

TOTAL: \$40,651.55

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N.J. SPILL COMPENSATION FUND

CLEAN-UP EXPENSE

7/1/78-6/30/79

CHEMICAL SPILLS

NO.	SPILL	AMOUNT
1. 789-01 Hammonton	illegal abandonment of leaking drums of hazardous materials	\$ 49,761.93
2. 789-04 Freehold	illegal abandonment of leaking drums of miscel- laneous chemicals	390.00
3. 789-05 Hammonton	illegal chemical dump	195.00
4. 789-06 Elizabeth	accidental spill of waste chemicals	273.53
5. 789-08 Jersey City (United Chemical)	fire in chemical warehouse, massive discharge of haz- ardous substances; fire originated at adjacent location	547,070.69
6. 789-11 Elizabeth	accidental spill of waste chemicals	193.51
7. 789-12 New Shrewsbury	illegally abandoned drums of leaking hazardous chemicals	4,958.14
8. 789-13 Newark (Arlington Warehouse)	fire in chemical ware- house, discharge of haz- ardous substances	1,159,530.08

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9. 789-14 Teaneck	lithium battery waste contaminated soil due to fire in disposal vehicle	16,756.20
10. 789-17 Elizabeth (Chemical Control Corp.)	leaking drums of waste chemicals; court order issued to clean up	11,938.52
11. 789-20 Elmwood Park	deliberate dump of zinc chloride	5,316.78

TOTAL: \$1,796,384.38

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ADMINISTRATOR'S ANNUAL REPORT

New Jersey Spill Compensation Fund

STATEMENT OF CASH RECEIPTS &

DISBURSEMENTS

For 15 Month Period 4/1/77 - 6/30/78

Receipts

Taxes Collected	\$7,495,625.83
Penalties for Violations ...	34,619.00
Interest on Investments ...	207,628.66
Total Receipts	\$7,737,873.49

Disbursements

Salaries	\$ 8,125.00
Administrative Services ...	866.68
Clean-up Expense	63,574.04
Division of Taxation	20,960.00
DEP Pollution Control Expense	200,000.00
(S 734 signed 6/30/78)	
Contingent Liability (Administration)	291,716.69
Total Disbursements	\$ 585,242.41
Balance 6/30/78	\$7,152,631.08

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New Jersey Spill Compensation Fund

Potential Liability for Damages as of 6/30/78

Fund Balance 6/30/78	\$7,152,631.08
Outstanding Violations . \$	30,570.00
Pending Claims (8)	(\$7,588,696.34)*
Total (Potential Deficit)	(\$ 405,495.76)*

The potential liabilities against the Fund are recorded at face value and include the Ventron Corp. case (see below) at a value of \$6,000,000. Any payment of claims, as required by legislation, will be subject to a claims adjustment evaluation and the Fund will acquire subrogation rights to proceed for reimbursement against dischargers if the discharger can be identified.

Since April 1, 1977, there have been ten (10) damage claims filed against the Fund. Two (2) have been resolved without payments from the Spill Compensation Fund. Of the eight (8) claims pending, six (6) relate to discharges which commenced prior to 4/1/77.

The legal issue of whether the Spill Compensation and Control Act provides for retroactive clean-up and damage payments is the subject of litigation in *State of New Jersey, Department of Environmental Protection vs Ventron Corp.*, Docket No. C-2996-75, Superior Court Chancery Division, Bergen County. This case raises the question of whether the Fund is strictly liable for clean-up, removal and abatement expenses related to alleged mercury pollution of a 40 acre tract of land in Carlstadt, New Jersey, which occurred prior to April 1, 1977. The expense of such corrective procedures has been estimated at approximately \$5-6 million. To protect the financial viability of the Fund and assure the administration of the Fund in conformity with the requirements of the Spill Compensation and Control Act,

the Administrator has formally taken the position through counsel in the *Ventron* case that the Fund is responsible only for discharges of hazardous substances occurring *after* the effective date of the Act.

Public awareness of the Fund has been increasing. In addition to a high frequency of telephone inquiries, there have been seventeen (17) requests for claim forms which have been sent out.

In general, known dischargers are responding directly to damage claims. Because of the Fund, damage claims by individuals and municipalities can be processed at less cost to the public by soliciting the assistance of the Administrator who has been able to invoke the provisions of the Act to encourage settlements by known dischargers without requiring court action.

ROBERT E. HUNT
ADMINISTRATOR

/s/ ROBERT E. HUNT